IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9398 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SONABHAI BHAIJIBHAI KOLI & 3 - Petitioner(s)
Versus
AHMEDI KURBANHUSEN PIPLODWALA & 2 - Respondent(s)

==========

Appearance :

MR PRAKASH K JANI for Petitioner(s) : 1 - 3, 3.2.1, 3.2.2, 3.2.3, 3.2.4,3.2.5 - 4, 4.2.1, 4.2.2,4.2.3
MR HS MUNSHAW for Respondent(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8,1.2.9

==========

CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 14/06/2006

ORAL JUDGMENT

1.By instant petition under Article 227 of the Constitution, the petitioners/original defendants, seek to challenge the order dated

13.11.1997 rendered in Misc. Civil Application No.3 of 1996 by the learned 2nd Extra Assistant Judge, Panchmahals at Godhra by which the application filed by the petitioners/original defendants under Section 5 of the Limitation Act, 1963 ('the Act' for short), seeking condonation of delay in filing Regular Civil Appeal against the judgment and decree dated 31.3.1990 rendered in Regular Civil Suit No.12 of 1987 by the learned Civil Judge (JD), Devgadh Baria, has been dismissed.

2. Having heard Mr. PK Jani, learned advocate of the petitioners/original defendants and Mr. HS Munshaw, learned advocate of the respondents/original plaintiffs and having perused the impugned order and considering the celebrated principles governing the discretionary exercise of powers conferred under section 5 of the Act and also the reported decisions of the Apex Court construing Section 5 of the Act liberally, according to

this Court, the learned 2nd Extra Assistant Judge, Panchmahals at Godhra ought to have condoned the delay as there was sufficient cause which prevented the petitioners from filing the Regular Civil Appeal against the impugned judgment and decree dated 31.3.1990 rendered in Regular Civil Suit No.12 of 1987 by the learned Civil Judge (JD), Devgadh Baria, decreeing the suit for possession against the petitioners. It is also a matter of record that the petitioners are tribal. The record does not indicate that there was any inaction or negligence on the part of the petitioners in prosecuting the appeal. The explanation for delay offered by the petitioners is not only plausible but acceptable. It is also a settled principle of law that no matter should be thrown overboard without deciding it on permit. Therefore, according to this court, if the delay as prayed for is condoned, the same would meet the ends of justice.

3.In aforesaid view of the matter, according to this court, the order dated 13.11.1997 passed by the learned 2nd Extra Assistant Judge, Panchmahals at Godhra, dismissing the application filed by the petitioners under Section 5 of the Act for condonation of delay deserves to be quashed and set aside by allowing this petition.

4.For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned order dated 13.11.1997 passed in Misc. Civil Application No.3 of 1996 by the learned 2nd Extra Assistant Judge, Panchmahals at Godhra is hereby quashed and set aside. Resultantly, Misc. Civil Application No.3 of 1996 filed by the petitioners is allowed. As a consequence thereof, the learned 2nd Extra Assistant Judge, Panchmahals at Godhra is directed to register the Regular Civil Appeal filed by the petitioners against the judgment and decree

dated 31.3.1990 rendered in Regular Civil Suit No.12 of 1987 by the learned Civil Judge (JD), Devgadh Baria and shall decide the same in accordance with law.

5.It is stated by Mr. PK Jani, learned advocate of the petitioners that the respondents have filed Execution Application No.84 of 1993 to recover possession on the basis of the impugned decree. Therefore, till the lower appellate court decides the appeal or application praying to stay the impugned decree, the proceedings of Execution Application No.84 of 1993 shall stand stayed.

Rule is made absolute accordingly.

(A.M. Kapadia, J.)

...

(karan)